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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

PETITION TO PROMULGATE RULE 412,
ARIZONA RULES OF EVIDENCE

) Supreme Court No. R-12-0029
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**COMMENT TO THE PETITION TO
PROMULGATE NEW ARIZONA RULES
OF EVIDENCE, RULE 412**

I concur in the oppositions to the petition to promulgate Ariz.R.Evid., Rule 412 filed by the State Bar of Arizona and the Arizona Association of Defense Counsel. For reference, I have approximately 30 civil jury trials and 250 arbitration hearings in my professional history.

I. UNFAIR SHIFTING OF BURDEN OF PROOF TO DEFENDANTS

It is well-established that the plaintiff has the burden of proof in personal injury cases on issues of reasonableness and necessity for medical damages. The proposed rule change would shift this burden to defendants. This is unfair. A presumption that medical expenses are reasonable and necessary *simply because the expenses were incurred* is illogical and does not take into consideration the collateral issues inherent in medical billings (i.e., balance billing, reductions, duplication, improper coding, etc.).

II. RULE CHANGE IS UNNECESSARY

Pursuant to Rule 75(e), Ariz.R.Civ.P., arbitrators are directed to admit into evidence, without further proof, the following categories of documentary evidence:

- (1) dated and itemized hospital bills,
- (2) dated and itemized bills of doctors and dentists,

(3) dated and itemized bills of registered nurses, licensed practical nurses, and physical therapists,

(4) bills for prescriptions, eyeglasses, and prosthetics, and

(5) doctors' medical reports.

This allows plaintiffs an economical way, in the vast majority of cases, to provide evidence of reasonableness and necessity. In addition, the rule allows medical reports of doctors to come in as well. This allows plaintiffs the ability to provide evidence regarding reasonableness and necessity with only a modest expenditure of time or money.

III. DOCTRINE OF UNINTENDED CONSEQUENCES

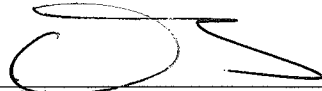
The current system of providing evidence related to the reasonableness and necessity in medical care is well understood by experienced civil lawyers. What cannot be determined is the unforeseen negative consequences to defendants *and plaintiffs* if the rule was adopted. The subject petition discusses limited application; however, a clear reading of the proposed language shows broad application. Accordingly, the fallout from adoption of this rule cannot be anticipated with certainty.

For these reasons, I oppose the Petition to Promulgate Rule 412, Arizona Rules of Evidence.

RESPECTFULLY SUBMITTED this 16TH day of May, 2013.

TURLEY CHILDERS & TORRENS, P.C.

By


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ELECTRONICALLY filed
this 16 day of May, 2013 with the
Clerk of the Supreme Court of Arizona.

COPY of the foregoing mailed
this 16 day of May, 2013 to:

Jack Levine, Esq.
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Petitioner



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